

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2005-0970-PST-E TCEQ ID: RN101804144 CASE NO.: 25836**  
**RESPONDENT NAME: FRANK LEWIS DBA LEWIS SERVICE AND SALES**

Page 1 of 3

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 303 Highway 90 West, China, Jefferson County</p> <p><b>TYPE OF OPERATION:</b> Former gasoline station</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 25, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney:</b> Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Steve Lopez, Waste Enforcement Section, MC 128, (512) 239-1896</p> <p style="margin-left: 20px;"><b>TCEQ Regional Contact:</b> Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 899-8705</p> <p style="margin-left: 20px;"><b>Respondent:</b> Mr. Frank Lewis, Owner, Lewis Service and Sales, P.O. Box 404, China, Texas 77613</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> April 18, 2005 and June 7, 2005</p> <p><b>Date of NOE Relating to this Case:</b> May 26, 2005</p> <p><b>Background Facts:</b> The EDRP was filed on December 9, 2005, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The Respondent has failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The gasoline station is not in operation and not yet in compliance.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to either permanently remove the UST system from service, not later than 60 days after the prescribed upgrade implementation date, or to ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(d)(2)].</li> <li>Failed to provide an amended registration regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</li> <li>Failed to provide proper corrosion protection for all USTs, [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)].</li> </ol>	<p><b>Total Assessed:</b> \$18,975</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$18,975</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements.</p> <ol style="list-style-type: none"> <li>Within 10 days: <ol style="list-style-type: none"> <li>Ensure that the UST system has been emptied of all regulated substances, and</li> <li>Submit registration to indicate the current operational status of the UST system.</li> </ol> </li> <li>Within 30 days, submit payment for all outstanding fees, including any associated penalties and interest.</li> <li>Within 45 days, either: <ol style="list-style-type: none"> <li>Install or implement a release detection method;</li> <li>Install a corrosion protection method; and</li> <li>Demonstrate financial responsibility; or</li> <li>Permanently remove the UST system from service.</li> </ol> </li> <li>Within 60 days, submit written, notarized certification to demonstrate compliance with these Ordering Provisions.</li> </ol>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b)].</p> <p>5. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>6. Failed to pay outstanding UST fees for TCEQ Financial Account No. 0020347U for fiscal year 1988 through fiscal year 2005 [30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702].</p>		



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

<b>DATES</b>	<b>Assigned</b>	31-May-2005	<b>Screening</b>	08-Jun-2005	<b>EPA Due</b>	
	<b>PCW</b>	18-Jun-2008				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Frank Lewis dba Lewis Service and Sales		
<b>Reg. Ent. Ref. No.</b>	RN101804144		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor Source

## CASE INFORMATION

<b>Enf./Case ID No.</b>	25836	<b>No. of Violations</b>	6
<b>Docket No.</b>	2005-0970-PST-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Steven Lopez
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

## TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$16,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 15% Enhancement Subtotals 2, 3, &amp; 7 \$2,475

Notes Enhancement for three previous NOV's with same or similar violations.

Culpability No 0% Enhancement

Subtotal 4 \$0

Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction

Subtotal 5 \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes The respondent is currently not in compliance.

Economic Benefit

0% Enhancement\*

Subtotal 6 \$0

Total EB Amounts	\$6,525
Approx. Cost of Compliance	\$28,550

\*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

Final Subtotal \$18,975

## OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$18,975

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$18,975

## DEFERRAL

0% Reduction

Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral for a Findings Order.

## PAYABLE PENALTY

\$18,975

**Screening Date** 08-Jun-2005**Docket No.** 2005-0970-PST-E**PCW****Respondent** Frank Lewis dba Lewis Service and Sales

Policy Revision 2 (September 2002)

**Case ID No.** 25836

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101804144**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Steven Lopez**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgments or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 15%>> **Repeat Violator (Subtotal 3)**No ☐**Adjustment Percentage (Subtotal 3)** 0%>> **Compliance History Person Classification (Subtotal 7)**Average Performer ☐**Adjustment Percentage (Subtotal 7)** 0%>> **Compliance History Summary****Compliance History Notes**

Enhancement for three previous NOVs with same or similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 15%

**Screening Date** 08-Jun-2005**Docket No.** 2005-0970-PST-E**PCW****Respondent** Frank Lewis dba Lewis Service and Sales

Policy Revision 2 (September 2002)

**Case ID No.** 25836

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101804144**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Steven Lopez**Violation Number** 1**Primary Rule Cite(s)** 30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(d)(2)**Secondary Rule Cite(s)****Violation Description**

The respondent failed to either permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, or ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity. Specifically, the respondent failed to permanently remove from service three (3) USTs that were not brought into timely compliance with the upgrade requirements, and a TCEQ investigator documented that tank one contained 2.5 inches of regulated substances, tank two contained 3.25 inches of regulated substances, and tank three contained 15 inches of regulated substances.

**Base Penalty** \$10,000>> **Environmental, Property and Human Health Matrix**

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

**Percent** 25%>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

**Percent****Matrix Notes**

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** -\$7,500**Base Penalty Subtotal** \$2,500**Violation Events****Number of Violation Events** 3

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$7,500

Three quarterly events are recommended (one per tank) based on the Investigation date of April 18, 2005 and the screening date of June 8, 2005.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** \$3,559**Violation Final Penalty Total** \$8,625**This violation Final Assessed Penalty (adjusted for limits)** \$8,625

**Economic Benefit Worksheet**

Respondent Frank Lewis dba Lewis Service and Sales

Case ID No. 25836

Reg. Ent. Reference No. RN101804144

Media [Statute] Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	01-Feb-2006	7.1	\$3,559	n/a	\$3,559

Notes for DELAYED costs

The estimated cost to permanently remove a UST system from service. The Date Required is the date when the respondent was required to upgrade the UST system and the Final Date is the projected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

n/a

Approx. Cost of Compliance \$10,000

TOTAL \$3,559

Screening Date 08-Jun-2005

Docket No. 2005-0970-PST-E

PCW

Respondent Frank Lewis dba Lewis Service and Sales

Policy Revision 2 (September 2002)

Case ID No. 25836

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101804144

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Secondary Rule Cite(s)

Violation Description

The respondent failed to provide amended registration regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition. Specifically, the respondent failed to update the registration to reflect the temporarily out-of-service status.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

		Harm			Percent
Release		Major	Moderate	Minor	
OR	Actual				
	Potential				

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			

Matrix Notes

100% of the rule requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended based on the Investigation date of April 18, 2005.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,150

This violation Final Assessed Penalty (adjusted for limits) \$1,150



**Economic Benefit Worksheet****Respondent** Frank Lewis dba Lewis Service and Sales**Case ID No.** 25836**Reg. Ent. Reference No.** RN101804144**Media [Statute]** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$100	18-Apr-2005	01-Feb-2006	0.8	\$4	n/a	\$4
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to amend or update the UST registration. The Date Required is the date of the investigation and the Final Date is the projected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

n/a

Approx. Cost of Compliance **\$100****TOTAL** **\$4**

**Screening Date** 08-Jun-2005**Docket No.** 2005-0970-PST-E**PCW****Respondent** Frank Lewis dba Lewis Service and Sales

Policy Revision 2 (September 2002)

**Case ID No.** 25836

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101804144**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Steven Lopez**Violation Number** 3**Primary Rule Cite(s)** 30 Tex. Admin. Code § 334.49(a)**Secondary Rule Cite(s)** Tex. Water Code § 26.3475(d)**Violation Description**

The respondent failed to provide proper corrosion protection for all USTs. Specifically, the respondent failed to install a method of cathodic protection for the USTs at this Facility.

**Base Penalty** \$10,000>> **Environmental, Property and Human Health Matrix**

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential	X			25%

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent

**Matrix Notes**

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** -\$7,500**Base Penalty Subtotal** \$2,500**Violation Events****Number of Violation Events** 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended based on the Investigation date of April 18, 2005 and the screening date of June 8, 2005.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** \$831**Violation Final Penalty Total** \$2,875**This violation Final Assessed Penalty (adjusted for limits)** \$2,875

**Economic Benefit Worksheet**

Respondent Frank Lewis dba Lewis Service and Sales

Case ID No. 25836

Reg. Ent. Reference No. RN101804144

Media [Statute] Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment	\$15,000	18-Apr-2005	01-Feb-2006	0.8	\$40	\$792	\$831
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for the installation of a cathodic protection system. The Date Required is the date of the investigation and the Final Date is the projected date of compliance.

<b>Avoided Costs</b>		ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)					
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

n/a

Approx. Cost of Compliance \$15,000

TOTAL \$831

**Screening Date** 08-Jun-2005**Docket No.** 2005-0970-PST-E**PCW****Respondent** Frank Lewis dba Lewis Service and Sales

Policy Revision 2 (September 2002)

**Case ID No.** 25836

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101804144**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Steven Lopez**Violation Number** 4**Primary Rule Cite(s)** 30 Tex. Admin. Code § 37.815(a) and (b)**Secondary Rule Cite(s)****Violation Description**

The respondent failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

**Base Penalty** \$10,000>> **Environmental, Property and Human Health Matrix**

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual				Percent
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
		X			Percent 10%
<b>Matrix Notes</b>	100% of the rule requirement was not met.				

**Adjustment** -\$9,000**Base Penalty Subtotal** \$1,000**Violation Events****Number of Violation Events** 3

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

**Violation Base Penalty** \$3,000

Three single events (one per tank) are recommended based upon the investigation conducted on April 18, 2005.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** \$2,048**Violation Final Penalty Total** \$3,450**This violation Final Assessed Penalty (adjusted for limits)** \$3,450

**Economic Benefit Worksheet**

Respondent Frank Lewis dba Lewis Service and Sales

Case ID No. 25836

Reg. Ent. Reference No. RN101804144

Media [Statute] Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0
Notes for DELAYED costs	n/a						

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	18-Apr-2004	18-Apr-2005	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs	The estimated cost (\$650 per tank) to provide financial assurance for three petroleum USTs for one year prior to April 18, 2005 investigation.						

Approx. Cost of Compliance \$1,950

TOTAL \$2,048

**Screening Date** 08-Jun-2005**Docket No.** 2005-0970-PST-E**PCW****Respondent** Frank Lewis dba Lewis Service and Sales

Policy Revision 2 (September 2002)

**Case ID No.** 25836

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101804144**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Steven Lopez**Violation Number**

5

**Primary Rule Cite(s)** 30 Tex. Admin. Code § 334.50(b)(1)(A)**Secondary Rule Cite(s)** Tex. Water Code § 26.3475(c)(1)**Violation Description**

The respondent failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

**Base Penalty** \$10,000>> **Environmental, Property and Human Health Matrix****Harm**

Release	Major	Moderate	Minor
Actual			
Potential	X		

**Percent** 25%>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor

**Percent****Matrix Notes**

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** -\$7,500**Base Penalty Subtotal** \$2,500**Violation Events****Number of Violation Events** 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$2,500

One quarterly event is recommended based on the Investigation date of April 18, 2005 and the screening date of June 8, 2005.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** \$83**Violation Final Penalty Total** \$2,875**This violation Final Assessed Penalty (adjusted for limits)** \$2,875

**Economic Benefit Worksheet**

Respondent Frank Lewis dba Lewis Service and Sales

Case ID No. 25836

Reg. Ent. Reference No. RN101804144

Media [Statute] Petroleum Storage Tank

Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	------------------------------	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$1,500	18-Apr-2005	01-Feb-2006	0.8	\$4	\$79	\$83
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs The estimated cost to provide a release detection method. The Date Required is the date of the investigation and the Final Date is the projected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs n/a

Approx. Cost of Compliance \$1,500

TOTAL \$83

**Screening Date** 08-Jun-2005**Docket No.** 2005-0970-PST-E**PCW****Respondent** Frank Lewis dba Lewis Service and Sales

Policy Revision 2 (September 2002)

**Case ID No.** 25836

PCW Revision May 19, 2005

**Reg. Ent. Reference No.** RN101804144**Media [Statute]** Petroleum Storage Tank**Enf. Coordinator** Steven Lopez**Violation Number** 6**Primary Rule Cite(s)** 30 Tex. Admin. Code § 334.22(a)**Secondary Rule Cite(s)** Tex. Water Code § 5.702

**Violation Description** The respondent failed to pay outstanding UST fees for TCEQ Financial Assurance Account No. 0020347U for fiscal year 1988 through fiscal year 2005 as documented during a record review conducted on June 7, 2005.

**Base Penalty** \$10,000>> **Environmental, Property and Human Health Matrix**

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential				

>> **Programmatic Matrix**

		Falsification			Percent
		Major	Moderate	Minor	

**Matrix Notes**

**Adjustment** -\$10,000**Base Penalty Subtotal** \$0**Violation Events****Number of Violation Events**

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$0

No penalty is recommended because penalty and interest will be assessed at the next billing.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** \$0**Violation Final Penalty Total** \$0**This violation Final Assessed Penalty (adjusted for limits)** \$0



**Economic Benefit Worksheet**

Respondent Frank Lewis dba Lewis Service and Sales

Case ID No. 25836

Reg. Ent. Reference No. RN101804144

Media [Statute] Petroleum Storage Tank

Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

n/a

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

n/a

Approx. Cost of Compliance TOTAL

## Compliance History

Customer/Respondent/Owner-Operator: CN600978753 Frank Lewis Classification: AVERAGE Rating: 13.500

Regulated Entity: RN101804144 LEWIS SERVICE AND SALES Classification: AVERAGE Site Rating: 13.50

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 43595

Location: 303 HWY 90 W, CHINA, TX, 77613 Rating Date: 9/1/04 Repeat Violator: NO

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: June 7, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 07, 2000 to June 07, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Deana Holland Phone: (512)239-2504

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Comments:

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 10/22/2003 (247936)
- 2 05/26/2005 (378357)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/12/2004 (272131)

Self Report? NO

Citation:

30 TAC Chapter 334, SubChapter C 334.54(d)(2)

Classification: Moderate

Description: Failure to empty UST's of all regulated substances to less than an inch.

Self Report? NO

Citation:

30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Classification: Moderate

Description: Failure to amend, update, or change registration information.

Self Report? NO

Citation:

30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Classification: Moderate

Description: Failure to permanently remove any existing UST system that was not brought into timely compliance with upgrade requirements no later than sixty (60) days after the prescribed implementation date.

Date: 07/16/2004 (282193)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)

Description: Failure to empty UST's of all regulated substances to less than an inch.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to amend, update, or change registration information.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to permanently remove any existing UST system that was not brought into timely compliance with upgrade requirements no later than sixty (60) days after the prescribed implementation date.

Date: 10/22/2003 (247936)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)

Description: Failure to empty UST's of all regulated substances to less than an inch.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to amend, update, or change registration information.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to permanently remove any existing UST system that was not brought into timely compliance with upgrade requirements no later than sixty (60) days after the prescribed implementation date.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
FRANK LEWIS DBA LEWIS  
SERVICE AND SALES,  
RN101804144**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2005-0970-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7, and 26 and the rules of the TCEQ, which requests appropriate relief, the imposition of an administrative penalty, and corrective action of the respondent. The respondent made the subject of this Order is Frank Lewis dba Lewis Service and Sales ("Mr. Lewis").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Mr. Lewis owns a former gasoline station located at 303 Highway 90 West, China, Jefferson County, Texas (the "Facility").
2. Mr. Lewis's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Lewis's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an inspection on April 18, 2005, a TCEQ Beaumont Regional Office investigator documented that Mr. Lewis:
  - a. Failed to either permanently remove the UST system from service, not later than 60 days after the prescribed upgrade implementation date, or to ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity;
  - b. Failed to provide an amended registration regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on

which the owner or operator first became aware of the change or addition. Specifically, Mr. Lewis failed to properly update the registration records to reflect the out of service status;

- c. Failed to provide proper corrosion protection for all USTs. Specifically, Mr. Lewis failed to install a method of cathodic protection for the USTs at the Facility;
  - d. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and
  - e. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
4. During a record review on June 7, 2005, TCEQ staff documented that Mr. Lewis failed to pay outstanding UST fees for TCEQ Financial Account No. 0020347U for fiscal year 1988 through fiscal year 2005.
  5. Mr. Lewis received notice of the violations in Findings of Fact Nos. 3.a. through 3.e. on or about May 31, 2005.
  6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Frank Lewis dba Lewis Service and Sales" (the "EDPRP") in the TCEQ Chief Clerk's office on December 9, 2005.
  7. By letter dated December 9, 2005, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Lewis with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Lewis received notice of the EDPRP.
  8. More than 20 days have elapsed since Mr. Lewis received notice of the EDPRP, provided by the Executive Director. Mr. Lewis failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Lewis is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7, and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Lewis failed to permanently remove the UST system from service, not later than 60 days after the prescribed upgrade implementation date, or failed to ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(d)(2).
3. As evidenced by Finding of Fact No. 3.b., Mr. Lewis failed to provide an amended registration regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
4. As evidenced by Finding of Fact No. 3.c., Mr. Lewis failed to provide proper corrosion protection for all USTs, in violation of 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d).
5. As evidenced by Finding of Fact No. 3.d., Mr. Lewis failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b).
6. As evidenced by Finding of Fact No. 3.e., Mr. Lewis failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).
7. As evidenced by Finding of Fact No. 4, Mr. Lewis failed to pay outstanding UST fees for TCEQ Financial Account No. 0020347U for fiscal year 1988 through fiscal year 2005, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
8. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. Lewis with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

9. As evidenced by Finding of Fact No. 8, Mr. Lewis has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Lewis and assess the penalty recommended by the Executive Director.
10. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Lewis for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
11. An administrative penalty in the amount of eighteen thousand nine hundred seventy-five dollars (\$18,975.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
12. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Lewis is assessed an administrative penalty in the amount of eighteen thousand nine hundred seventy-five dollars (\$18,975.00) for violations of TEX. WATER CODE chs. 5 and 26 and rules of the TCEQ. The payment of this administrative penalty and Mr. Lewis's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Frank Lewis dba Lewis Service and Sales; Docket No. 2005-0970-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Mr. Lewis shall undertake the following technical requirements:

a. Within 10 days after the effective date of this Order, Mr. Lewis shall:

- i. Ensure that the UST system has been emptied of all regulated substances, in accordance with the applicable provisions of 30 TEX. ADMIN. CODE § 334.54 and
- ii. Submit registration to indicate the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Registration, Review & Reporting Division, MC-138  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

b. Within 30 days after the effective date of this Order, Mr. Lewis shall submit payment for all outstanding fees, including any associated penalties and interest with the notation, "Frank Lewis dba Lewis Service and Sales, TCEQ Financial Administration Account No. 0020347U" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC-214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

c. Within 45 days after the effective date of this Order, Mr. Lewis shall either:

- i. Install or implement a release detection method, in accordance with 30 TEX. ADMIN. CODE § 334.50;
- ii. Install a corrosion protection method, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
- iii. Demonstrate Financial Responsibility, in accordance with 30 TEX. ADMIN. CODE § 37.815; or



- iv. Permanently remove the UST system from service, in accordance with the applicable provisions of the 30 TEX. ADMIN. CODE § 334.55.
- d. Within 60 days after the effective date of this Order, Mr. Lewis shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. through 2.c.

The certification shall be notarized by a State of Texas Notary Public and include the following language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Derek Eades, Waste Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830

- 3. All relief not expressly granted in this Order is denied.
- 4. The provisions of this Order shall apply to and be binding upon Mr. Lewis. Mr. Lewis is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Lewis shall be made in writing to the Executive Director. Extensions are not effective until Mr. Lewis receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Lewis if the Executive Director determines that Mr. Lewis has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Frank Lewis dba Lewis Service and Sales  
DOCKET NO. 2005-0970-PST-E  
Page 8

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

AFFIDAVIT OF DINNIAH M. CHAHIN

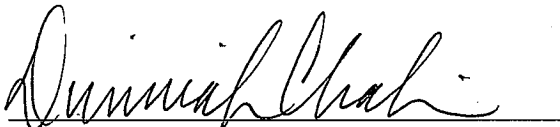
STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

"My name is Dinniah M. Chahin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Frank Lewis dba Lewis Service and Sales" (the "EDPRP") was filed with the Office of the Chief Clerk on December 9, 2005.

The EDPRP was sent to Mr. Lewis at his last known address on December 9, 2005 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Mr. Lewis received notice of the EDPRP. Mr. Lewis failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."



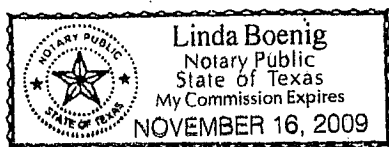
Dinniah M. Chahin

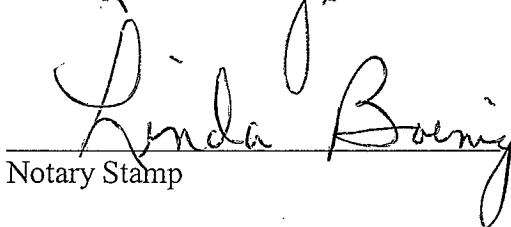
Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Dinniah M. Chahin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 20<sup>th</sup> day of June, A.D., 2008.



  
Notary Stamp